

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALBERT M. MARK,
Plaintiff,
v.
SEATTLE DEPARTMENT OF
TRANSPORTATION, STREET USE
DIVISION,
Defendant.)
No. C06-0880RSL
ORDER GRANTING DEFENDANT'S
CROSS-MOTION FOR SUMMARY
JUDGMENT

This matter comes before the Court on plaintiff’s “Motion for Summary Judgment” (Dkt. # 9), defendant’s “Cross-Motion for Summary Judgment” (Dkt. # 13), and “Defendant’s Motion for Dismissal Pursuant to FRCP 12(b)(6)” (Dkt. # 12).¹ Plaintiff has asserted a cause of action under 42 U.S.C. § 1983, alleging that defendant violated his Fourteenth Amendment rights by maliciously prosecuting him for displaying merchandise on the sidewalk in front of his store. In particular, plaintiff asserts that defendant, through Officer Hope Bauer, initiated a criminal complaint against him without probable cause to believe that a violation of SMC 15.04.010 had occurred and maliciously continued the prosecution through

¹ Plaintiff filed two memoranda in opposition to defendant's motion to dismiss. Dkt. # 19 and 24. Because defendant raised new issues in reply, both of plaintiff's responses have been considered by the Court.

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1 perjured testimony.

2 Summary judgment is appropriate when, viewing the facts in the light most
 3 favorable to the nonmoving party, there is no genuine issue of material fact which would
 4 preclude summary judgment as a matter of law. Once the moving party has satisfied his burden,
 5 he is entitled to summary judgment if the non-moving party fails to designate, by affidavits,
 6 depositions, answers to interrogatories, or admissions on file, "specific facts showing that there
 7 is a genuine issue for trial." Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). "The mere
 8 existence of a scintilla of evidence in support of the non-moving party's position is not
 9 sufficient." Triton Energy Corp. v. Square D Co., 68 F.3d 1216, 1221 (9th Cir. 1995). Factual
 10 disputes whose resolution would not affect the outcome of the suit are irrelevant to the
 11 consideration of a motion for summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S.
 12 242, 248 (1986). In other words, "summary judgment should be granted where the nonmoving
 13 party fails to offer evidence from which a reasonable jury could return a verdict in its favor."
 14 Triton Energy, 68 F.3d at 1221.

15 Having reviewed the memoranda, declarations, and exhibits submitted by the
 16 parties, the Court finds as follows:

17 **(1) Statute of Limitations**

18 Defendant argues that plaintiff's claims are barred by the statute of limitations.
 19 "In determining the proper statute of limitations for actions brought under 42 U.S.C. § 1983, we
 20 look to the statute of limitations for personal injury actions in the forum state." Maldonado v.
Harris, 370 F.3d 945, 954 (9th Cir. 2004). The limitations period for personal injury claims in
 21 Washington is three years. RCW 4.16.080(2); see also Gausvik v. Perez, 392 F.3d 1006, 1009
 22 (9th Cir. 2004).

23 Although state law provides the period of limitations, federal law determines when
 24 the cause of action accrues. Cline v. Brusett, 661 F.2d 108, 110 (9th Cir. 1981). Under federal
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1 law, a plaintiff's cause of action generally accrues when he or she knows or has reason to know
 2 of the injury which is the basis for the claim. Acknowledging that a claim for malicious
 3 prosecution cannot be brought until the underlying charge has been finally resolved in favor of
 4 plaintiff (see Cline, 661 F.2d at 110-11), defendant argues that plaintiff's claim accrued on
 5 December 3, 2002, when the Superior Court affirmed the municipal court's judgment against
 6 plaintiff. Plaintiff asserts, however, that the criminal prosecution was not finally resolved until
 7 the Washington State Supreme Court denied his petition to modify the Commissioner's ruling on
 8 June 2, 2004. Dkt. 23 at 11. Although the relationship between the criminal complaint initiated
 9 by defendant on April 19, 2001, and the Supreme Court's ruling on plaintiff's personal restraint
 10 petition in Cause No. 75124-2 is unclear, plaintiff has alleged that the two arose out of the same
 11 events. Based on the current record, the Court declines to find that plaintiff's malicious
 12 prosecution claim is time-barred as a matter of law. If, as plaintiff asserts, the June 2, 2004,
 13 decision finally resolved the criminal complaint issued on April 19, 2001, the statute of
 14 limitations, including the 60-day claim filing period, will not expire until August 3, 2007.²

15 **(2) Malicious Prosecution**

16 Plaintiff's malicious prosecution claim under § 1983 fails as a matter of law. In
 17 order to prevail on such a claim, plaintiff must establish that: (1) the prosecution was instituted
 18 or continued by defendant; (2) without probable cause; (3) and through malice; (4) the
 19 proceedings were terminated in favor of plaintiff; and (5) plaintiff suffered injury as a result.
 20 Hanson v. City of Snohomish, 121 Wn.2d 552, 558 (1993). Although plaintiff disagrees with
 21 defendant's interpretation of SMC 15.04.010 and SMC 15.02.048, that interpretation has been

22 ² Plaintiff has disavowed any attempt to bring a separate constitutional claim based on Officer
 23 Bauer's alleged perjury (Dkt. # 24 at 4) and acknowledges that any claim asserting racial discrimination
 24 would be barred by the doctrine of res judicata (Dkt. # 24 at 2). To the extent that plaintiff's complaint
 25 includes due process and/or equal protection claims other than the malicious prosecution claim, such
 26 claims would have accrued no later than December 3, 2002, and are barred by the three-year statute of
 limitations.

1 upheld by the courts of Washington. The municipal court found that plaintiff's daily use of the
2 sidewalk in front of his store to display merchandise did not fall within the exception to the
3 permit requirement provided in SMC 15.02.048(A). The Superior Court and, possibly, the state
4 Supreme Court, upheld the municipal court's decision. Thus, plaintiff cannot establish that the
5 criminal proceedings initiated and continued by defendant were terminated in his favor. In the
6 absence of any evidence that could support this element of plaintiff's malicious prosecution
7 claim, defendant is entitled to summary judgment

8 For all of the foregoing reasons, plaintiff's motion for summary judgment (Dkt.
9 # 9) is DENIED, defendant's cross-motion for summary judgment (Dkt. # 13) is GRANTED,
10 and defendant's motion to dismiss (Dkt. # 12) is DENIED. The Clerk of Court is directed to
11 enter judgment in favor of defendant and against plaintiff.
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13 DATED this 3rd day of August, 2006.
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17 Robert S. Lasnik
18 United States District Judge
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